U.S. Department of Homeland Security
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Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 20 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a children's and youth minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that it had extended a qualifying job offer to the beneficiary. The director also determined that the petitioner had failed to establish that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submitted a brief and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must

have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on October 29, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a children's and youth minister throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary came to the United States in April of 2000 to continue working for its ministry, after working for five years as director of its children and youth ministry in Zambia. The petitioner also stated that after her arrival in the United States, the beneficiary "traveled and ministered to children and youths in many ministries and organizations." In its letter dated November 17, 2001, the petitioner stated, "For the last Six months minister Mba has been working in our children and youth ministry as our children and youth pastor, albeit on [a] voluntary basis."

In its response to the director's request for evidence (RFE) dated March 14, 2003, the petitioner stated that the beneficiary's salary from her church in Zambia was 400,000.00 Kwacha. The petitioner states that it compensates the beneficiary at a rate of $170.00 per week, in addition to paying her rent and providing her with free transportation.

The petitioner stated that the beneficiary attended the Word of Faith Bible Institute in 1999 and obtained a certificate in theology. Evidence submitted by the petitioner includes an October 30, 1999 "Certificate of Attendance" issued to the beneficiary from the Word of Faith Bible Institute; an April 15, 2001 Certificate of License, issued to the beneficiary from the Christian Restoration Center, acknowledging her qualifications for the ministry; and a November 20, 2001 Certificate of Ordinance, issued by the Christian Restoration Center, ordaining the beneficiary as a minister. The petitioner submitted no evidence that the Christian Restoration Center is affiliated with the petitioner, or that the beneficiary's ordination by this organization also authorizes her to serve as an ordained minister with the petitioner.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner does not provide evidence of the date that the beneficiary began her work with the petitioning organization in the United States. According to the petitioner, the beneficiary "traveled and ministered to children and youths in many ministries and organizations" after her arrival in the United States in April 2000. However, the petitioner submitted no evidence of this work by the beneficiary.

Further, the petitioner submitted no contemporaneous evidence of the beneficiary's employment with her church in Zambia or with the petitioning organization. On appeal, the petitioner submits copies of four canceled checks made payable to the Trails of Ashford Apartments and one to [redacted] designated as being for the pastor's rent. It is noted that [redacted] is the petitioner's pastor and the beneficiary's husband. The checks are dated in January and November 2001, and February, April and June 2002.

On appeal, counsel appears to argue that, as the beneficiary is a minister, her vocation of minister is sufficient to establish that she has the experience required by the statute and regulation. Counsel asserts that the beneficiary's attendance at the Word of Faith Institute, which counsel also asserts was only for one month, did not, as the director determined, disrupt the continuity of employment.

The statute and regulation requires two years continuous employment in the vocation or occupation in which the alien seeks entry into the United States. The petitioner has failed to submit evidence to substantiate the beneficiary's continuous employment in a religious vocation or occupation for two full years preceding the filing of the visa petition.

The director found that the petitioner did not establish that the beneficiary will be solely carrying on the duties of a minister or pastor, or that she would not be dependent upon supplemental employment or solicitation of funds for support. The director therefore determined that the petitioner had not extended a qualifying job offer to the beneficiary.

In its letter to the beneficiary, the petitioner stated that her job duties would be to "1. Work with the senior pastor to design and execute programs for the children and youths; 2. Plan and coordinate youth's and children's services; 3. Conduct youth and children Sunday school during church service and 4. Liaison with other youth ministers in the Houston area."

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

> [A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Although the petitioner submits a copy of an ordination certificate for the beneficiary, the record is not clear that she will be performing ministerial duties as a youth minister. The petitioner alleges that the beneficiary has performed the duties required by the proffered position for several years; however, we note that the beneficiary's pastoral license is dated only six months prior to the filing date of the visa petition and the "certificate of ordinance" is dated one month after the petition was filed. It is clear, therefore, that the duties performed by the beneficiary were not those required of a licensed or ordained minister. Further, as noted previously, the record does not establish that the beneficiary is a licensed or ordained minister within the petitioner's denomination.

Additionally, it is not clear from the duties outlined that the proffered job requires the beneficiary to serve as a licensed or ordained minister. The petitioner submits no evidence that duties such as "planning and coordinating" services for children and youth are only performed by authorized members of its clergy. The evidence indicates that, despite the beneficiary's ordination, the proffered job involves a religious occupation as opposed to a religious vocation.

On appeal, counsel argues that this categorization of the beneficiary's work is wrong, and that she is "engaged in a religious vocation, on account of the following; a lifetime commitment to religious life and or service, demonstrated by the vows she took during her ordination to further this purpose." In response to the director's RFE, the petitioner stated that the beneficiary preached in most services of the church, counseled and prayed with members, led and ministered to the women of the church, and raised and equipped the children's

ministry. Although the record is unclear, these duties appear to have been performed by the beneficiary at her church in Zambia. However, the petitioner submitted no evidence from the church in Zambia to substantiate its statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). No evidence establishes that the beneficiary was licensed or ordained to preach in the church in Zambia. The record does not establish that the beneficiary was ever engaged in the vocation of minister as defined by the regulation.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

As the petitioner has not established that the beneficiary will be engaged in the vocation of minister, it must show that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner's job offer indicates that the beneficiary would be expected to work full time at a salary of $400.00 per week. The petitioner also outlines the duties expected of the beneficiary in the job. The evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

The petitioner must also establish that it has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2), which states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In response to the RFE, the petitioner submitted a document labeled "Income Financial Statement from May 2001 to 30th October 2002." It highlights a "pastoral subsidy," which the petitioner indicates was for an eight-month period from February 2002 to October 2002. Nothing in the record establishes the nature of this "pastoral subsidy" or that it was paid to the beneficiary. As noted above, the beneficiary is married to the petitioner's pastor. The petitioner also included copies of checkbook duplicates of two checks made payable to the beneficiary in the amount of $170.00 and dated February 15, 2003 and March 3, 2003.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. Although counsel states on appeal that the petitioner is submitting an audited financial statement, the document submitted is a 2002 balance sheet compiled by an accountant and clearly states it is unaudited. Furthermore, that document reflects that the beneficiary had a net income of approximately $2,100 in 2002 and does not indicate payment of any salaries.

The evidence submitted does not establish that the petitioner has the ability to pay the beneficiary the proffered salary of $400.00 per week.

The record reflects that the beneficiary entered the United States on April 20, 2000 pursuant to a temporary visitor's visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

Counsel argues on appeal that denial of the petitioner will cause the beneficiary to suffer extreme hardship because of her "family ties" and "societal relationships." Counsel failed to correctly cite any of the supporting authorities for her arguments and failed to include copies of the decisions with her brief. Review of the two cited authorities that the AAO found reveals that they are based on prior statutory provisions for hardship in deportation proceedings and are not applicable in the present case. CIS is not required to approve applications or petitions where eligibility has not been demonstrated. *Matter of M--*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952). *See also Pearson v. Williams*, 202 U.S. 281 (1906); *Mannerfrid v. Brownell*, 145 F. Supp. 55 (D.D.C. 1956), affirmed 238 F.2d 32 (D.C. Cir. 1956); *Lazarescu v. United States*, 199 F.2d 898 (4th Cir. 1952); and *U.S. ex rel. Vajta v. Watkins*, 179 F.2d 137 (2nd Cir. 1950).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.